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No. 82-561

In the Supreme Court of the United States

OCTOBER TERM, 1982

JESSE J. JOHNSON, PETITIONER

v.

JOHN O. MARSH, JR.,
SECRETARY OF THE ARMY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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The judgment of the court of appeals in this civil case was entered on April 20, 1982 (Pet. App. A4), and rehearing was denied on May 28, 1982 (Pet. App. A3). The Chief Justice extended the time within which to file a petition for a writ of certiorari to September 25, 1982 (Pet. App. B). Petitioner did not obtain a further extension of time. The petition was filed on September 27, 1982.

Although petitioner has certified (Pet. 66) that he served the petition by mail "on or before September 25, 1982," he has not filed a notarized statement by a member of the Bar of this Court that would entitle him to invoke Rule 28.2 of the Rules of this Court. The petition is therefore untimely. The time limit provided in 28 U.S.C. 2101(c) is jurisdictional. *Department of Banking* v. *Pink*, 317 U.S. 264 (1942).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

NOVEMBER 1982

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